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Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance

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Letter dated 5 June 2018 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

Spain has the honour to transmit herewith the Chair's summary of the first annual retreat on international humanitarian law, on the theme "Protection of health care in armed conflict" (see annex),* which was organized by the Permanent Mission of Spain to the United Nations at the Greentree Foundation on 25 April 2018.

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 73, and of the Security Council.

(*Signed*) Jorge **Moragas**

* The annex is being circulated in the language of submission only.

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Annex to the letter dated 5 June 2018 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General

First annual retreat on international humanitarian law: Protection of health care in armed conflict

Chair's summary

On April 25th 2018, the Mission of Spain to the United Nations in New York organized the first annual Retreat on International Humanitarian Law (IHL) for members of the Security Council at the Greentree Foundation. A total of 27 delegations participated in the Retreat, including twelve Security Council members and a cross-regional group of 15 other Member States.

The high level opening session was hosted by Spain's Secretary of State for Foreign Affairs, Mr. Ildefonso Castro, and included opening remarks by the president of the International Committee of the Red Cross (ICRC), Mr. Peter Maurer.

The Retreat, that took place a few days before the second anniversary of UNSC Resolution 2286 (2016), was focused this year on the protection of healthcare in armed conflict.

UNSC Resolution 2286 reaffirms important IHL rules. It "strongly condemns acts of violence against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities". It also "demands that all parties to armed conflicts fully comply" with their existing obligations under international law and take action to ensure respect for and protection of the delivery of healthcare in armed conflict.

The Retreat was divided into two main parts: the first one dedicated to taking stock on the (lack of) implementation of the IHL rules reaffirmed in UNSCR 2286; and the second one to discuss the way forward and possible options to improve the implementation of IHL in this area. Practitioners on the field, humanitarian and legal experts, academics, and representatives of Member States, of the UN Secretariat and civil society organizations participated in the Retreat.

The meeting was conducted under the Chatman House rules and was broken down into six complementary panels focused on: (1) the legal framework under IHL applicable to the wounded and sick and the medical mission; (2) the implementation of IHL rules reaffirmed in UNSCR 2286; (3) an overview of the existing non-judicial mechanisms for investigating attacks on healthcare; (4) national measures adopted to prevent and address attacks on healthcare; (5) a focus on victims and the impact of counterterrorism measures or IHL rules; and (6) possible options to improve the implementation of the IHL rules contained in UNSCR 2286.

The meeting brought together different inspiring ideas which ended up with a fruitful and enriching debate. Without being exhaustive, the following points were raised during the discussions:

1. IHL establishes that every wounded and sick should receive healthcare assistance according, only and exclusively, to their basic medical needs, following the principle of impartiality. In IHL, medical care is legitimate, required and impartial. On top of that the mere provision of medical care should never be considered a military activity contributing to hostilities.

2. Despite the existing IHL rules and UNSCR 2286 which strongly condemn the attacks on healthcare in armed conflict, available data show that those acts of violence against health-care providers have not ceased or substantially diminished. State parties to a conflict have the primary responsibility to investigate incidents that occur in the course of the conflict. There was general agreement that the existing fact-finding regimes and mechanisms have not, to date, unlocked their full potential. They could be put to more strategic use, taking into account their different purposes and procedures, which were discussed during the Retreat. Although there are a huge variety of non-judicial mechanisms that could investigate incidents of violence on healthcare in armed conflict, a special importance was given to the potential of the International Humanitarian Fact-Finding Commission (IHFFC), a mechanism which has been activated only once since it was established, primarily due to the requirement that concerned parties consent to the investigation.

3. Everybody agreed on the need to count on accurate data to develop better tools to prevent violence from happening and mitigating its consequences. In order to monitor such attacks, the World Health Organization launched in December 2017 a new collection data base, "the Surveillance System for Attacks on Health Care", which aims to formalize and strengthen a collaborative data collection mechanism. Data are of paramount importance but it's even more important to use them to prevent new incidents. A representative of the Safeguarding Health in Conflict Coalition showed to the participants the preliminary results and conclusions of a report on attacks against healthcare which would be published a few weeks later, on May 21.

4. In order to perceive substantive changes regarding the number of incidents of violence against healthcare in armed conflict, efforts should be coming primarily from the States and parties to the conflict. Moreover, States must take preventive and proactive measures, both at the domestic and international level, to comply with IHL and SCR 2286. The Secretary-General's recommendations for the implementation of the UNSC Resolution 2286 include a menu of possible measures which would improve its implementation. Other initiatives such as the Health Care in Danger (HCiD) initiative, launched by the Red Cross and Red Crescent Movement in 2011 or the commitments included in political declarations such as the one launched by France in October 2017 also offer some guidance on how to translate political will into action.

5. In the domestic sphere, the speakers stressed the importance of incorporating the IHL obligations with regards to safeguarding access to, and the delivery of, healthcare into national legislation. The role that national parliaments can play, including through discussions of the matter within the International Parliamentary Union, was also stressed. It was underlined the need to strengthen military trainings and revise military doctrines to avoid the use of healthcare facilities for military purposes and adopt preventive and precautionary measures concerning ground movements, searches in health-care facilities, and military operations near health-care facilities. A special emphasis was given to the need of refraining from selling weapons to States or non-State actors which might be involved in incidents of violence against the wound and sick, healthcare facilities and personnel.

6. At the international level, States were urged to include compliance with IHL in their bilateral and multilateral contacts and to influence their partners and like-minded countries in order to help them comply with IHL. In this regard, States play a crucial role in increasing the political costs of such attacks by supporting international monitoring and inquiry mechanisms and taking diplomatic actions in order to strengthen accountability and end with impunity. Overall, there was a broad consensus about the necessity of developing a zero-tolerance policy among the International Community, so that there is a high political cost for a State or non-State actor to be linked or associated with this specific kind of attacks.

7. Another element discussed was the dilemmas and tensions created through the superposition of two applicable normative bodies (IHL and counterterrorism rules). They are evolving at two different speeds, with UNSC resolutions being the main source of the latter, with the consequence that sometimes there will be an outright conflict or contradiction with one another. Those who provide medical assistance must be protected from any possible criminal prosecution related to the performance of their duties. This is nowadays being challenged in a counterterrorism context where providing healthcare to non-state armed group, or even the mere fact of establishing dialogue with them in order to provide healthcare, is many times being associated to the perpetration of a criminal act (under the rationale behind Counterterrorism normative frameworks and measures). In this regard, a call was made to States to promote and implement domestic laws which would not criminalize such actions protected under the umbrella of IHL but also at the international level, and particularly in the UN counterterrorism context, specifically safeguard the impartiality of medical care.

8. Representatives shared a number of strategies and examples of how different States have developed efforts to implement IHL and UNSC Resolution 2286, two years after its adoption. These strategies ranged from concrete measures to adopt the domestic measures mentioned in point 5, in collaboration with international and local organizations, to the promotion of political declarations underscoring the importance of making efforts on compliance in this regard.

9. In the absence of a mechanism with a very specific mandate to investigate attacks against healthcare in armed conflicts anywhere where they may occur, one panelist pointed out the need to create a complementary panel that collects and systematizes the existing information, with a view to identify certain patterns and good practices that could be used in the area of data collection and reporting of these incidents.

10. The panelist identified three main functions to be performed by a panel of experts: (1) monitor and collect the available information to create a database that systemizes the patterns of incidents of violence against healthcare in armed conflicts. This would be made through a dialogue with the bodies which have been developing tracking systems, so as to avoid potential duplications and benefit from synergies; (2) an investigative function *stricto sensu*, as this panel would be in a position to assume the function of investigating specific incidents that could constitute attacks to healthcare amounting to breaches of IHL. This possibility would be done on a subsidiary basis only (after the assumption that other mechanisms are not able or willing to investigate for any reasons), and would require a specific activation decision through an ad hoc UNGA or UNSC Resolution. (3) Reparation, so that this panel of experts could give some orientation as regards to the need to prevent direct, structural long-term consequences in fragile healthcare systems in the territories that suffer them.

11. A few comments touched upon the need for this prospective panel to overcome requirements concerning the pre-requisite of obtaining access to the territory of the State where the incidents reported have taken place, something that leads to the question of the acceptance of the States concerned.

12. As a means of conclusion it was said that, with regard to protection of healthcare in conflict situations, there is a rather complete, comprehensive and dynamic normative framework, not deprived of tensions and dilemmas that need to be considered. The main question continues to be to what extent it is correctly implemented by parties to a conflict, and how UN member States can, domestically and internationally improve their efforts for full implementation. Certain gaps remain and need to be further developed: attention to victims; the preventive role of data

collection and independent and impartial monitoring and investigation; the search for accountability, both in legal terms but also in political terms; or the role that UN Missions can play in preventing attacks against healthcare.

13. Spain announced at the end of the Retreat that there would be another annual gathering in 2019, probably dedicated to a different area of IHL. The main goal of this initiative is bringing together UNSC members and a group of other interested countries to discuss more in depth and in a more informal setting, different areas of International Humanitarian Law.

May 18, 2018.